



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15289 OF 2023

Shridhar Kushaba Ukirde And Another

VERSUS

Laxman Bhanudas Wagh And Another

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Mr. P. R. Nangare, Advocate for the Petitioners

Mr. R. S. Kasar, Advocate for Respondents

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CORAM : R.M. JOSHI, J

DATE : JULY 04, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. Original Defendant Nos. 2 and 3 in RCS No. 41/2021 are aggrieved by the order of appointment of Court Commissioner at the initial stage of the suit by order dated 25.10.2023 passed below Exh. 19.

3. Learned Counsel for the Petitioners submit that though it is within the power of Court to appoint Court Commissioner, however, the same cannot be appointed for collecting evidence for parties. It is submitted that application for appointment of Court Commissioner under Order XXVI, Rule 9 of CPC has been

made at the initial stage of the proceedings i.e., before framing of the issues and hence, such order is not sustainable.

4. Learned Counsel for Respondents/Original Plaintiffs supported the impugned order by relying upon the judgment of this Court in case of Mayuresh Subhash Sonawane vs. Yashwant Babu and Ors, 2022(2) ALL MR 348 wherein it is held that it is inherent power of the Court to appoint Court Commissioner.

5. There cannot be any dispute with regard to the proposition that it is within the powers of the Court to pass appropriate order of appoint of Court Commissioner for local inspection. However, at the same time, the law on the point is settled to say that the Court Commissioner cannot be appointed to collect evidence on behalf of parties. Though there is no specific bar created by Order XXVI, Rule 9 for filing application before commencement of trial, the principle is that it is necessary for the party first to substantiate its case and then for the purpose of clarification etc Court Commissioner can be appointed.

As such, this exercise cannot be done at pre-mature stage when the trial has not begun.

6. In view of above discussion and considering the stage at which impugned order is passed, the impugned order dated 25.10.2023 passed below Exh. 19 is set aside.

7. In view of above, Petition is disposed of.

8. Needless to say that it is open for the Plaintiffs to seek appointment of the Court Commissioner at appropriate stage of trial.

(R. M. JOSHI, J.)

Malani